

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

LANDSTAR LIGON, INC., and RODNEY LEE
ENDRES,

Defendants-Appellees.

UNPUBLISHED

August 5, 2004

No. 250744

Ingham Circuit Court

LC No. 02-001741-ND

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's grant of summary disposition to defendant under MCR 2.116(C)(7). We affirm.

This case arose on March 22, 2001, when defendant Endres struck an overpass with an over-height load of construction machinery carried on a tractor-trailer owned by defendant Landstar. Plaintiff spent several months completing the bridge's damage assessment before it sent Landstar a claim for damages in late December 2001. Landstar initially answered that it would consider the information and estimate, and then requested more information. Landstar maintained an open line of communication with plaintiff, and on March 19, 2002, a Landstar agent suggested that he would seek settling authority from the company. An employee handling the negotiations on plaintiff's behalf took the gesture as a sign that negotiations "would now begin in earnest."

In November 2002, after negotiations began and failed, plaintiff filed suit against Landstar for damaging the bridge. In its motion for summary disposition, Landstar argued that a one-year statute of limitations applied and barred plaintiff's claim. It argued that because the machinery was carried on a motor vehicle, the no-fault act eliminated plaintiff's statutory tort cause of action and provided plaintiff only one year to claim expenses from Landstar's insurer for the tangible property damage. While plaintiff could recover directly from Landstar as a self-insured entity, Landstar argued that this fact did not alter the application of the no-fault act's limitations period for tangible property damage. The trial court agreed that the one-year limitations period applied and expired before plaintiff filed its complaint, so it granted defendant's summary disposition motion.

On appeal, plaintiff argues that the trial court erred when it applied the limitations period found in the no-fault act rather than the general tort statute of limitations for injury to property. We disagree. We review de novo a trial court's decision to grant a defendant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff first argues that the trial court improperly rejected its common-law theory that a statute of limitations never runs against the state unless the state specifically permits the statute's application to its claims. Plaintiff argues that the only statute of limitations the state has applied to itself is the general tort statute of limitations found in MCL 600.5805. We disagree. The statute that holds the state to the same limitations as individuals, MCL 600.5821(3), states "The periods of limitations prescribed for personal actions apply equally to personal actions brought in the name of the people of this state" The statutes of limitations that precede MCL 600.5821 contain several different periods of limitation regarding personal actions, including a catch-all six-year period specifically reserved for personal actions not otherwise specifically assigned a limitations period. MCL 600.5801, *et seq.*; MCL 600.5813. Applying the statute's plain language, "the periods" in MCL 600.5821(3) refer to these statutory periods and all other limitations on ordinary personal actions, including the one-year limitations period for recovering tangible property damages caused by a motor vehicle. MCL 500.3145. Therefore, the state accepted the one-year statute of limitations in MCL 500.3145, and plaintiff's contrary argument fails.

Plaintiff also argues that another statute, MCL 257.719, specifically requires truck owners to pay for the damage to overpasses that their over-height trucks hit, and the statute, rather than the no-fault act, applies to this case. Plaintiff argues that the statute creates absolute liability apart from tort and the no-fault act, and that the liability is subject to the three-year statute of limitations. We disagree. Whether the state's recovery is based on statute or common-law, it is derived from the category of law that provides a remedy for injury to persons or property – the category of law called torts. The Legislature presumptively knew of the breadth of the "tort" designation when it declared, "Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle . . . is abolished" MCL 500.3135. This abolition of tort remedies, including the remedies found in MCL 257.719, left plaintiff with only one source of recompense for the damaged bridge – Landstar's insurer. MCL 500.3121; MCL 500.3145; OAG 1979-1980, No 5479, p 132 (April 5, 1979). Accordingly, the limitations period for an action to recover from Landstar as a self-insured entity was one year from the date of the accident. MCL 500.3145(2). Because plaintiff failed to file its cause of action within the prescribed time limit, its action was barred.

Plaintiff finally argues that Landstar waived its statute of limitations defense by lulling plaintiff into postponing the filing of its complaint until after the statute had run. We disagree. Plaintiff failed to present any evidence to support its assertions until it moved for reconsideration following the summary disposition order. Therefore, this evidence arrived too late to prevent dismissal. MCR 2.116(G)(3)(a) and (5). Moreover, in its motion for reconsideration, plaintiff only presented evidence that, before the March 22, 2002 deadline, some of Landstar's agents reviewed plaintiff's demand, asked for more information, compiled a report, and prepared to negotiate the damages. Plaintiff's own negotiator admitted that she did not expect negotiations to begin in earnest until after a Landstar agent obtained authority to settle. The agent did not inform plaintiff that it would request the settlement authority until three days before the deadline.

At no point before the limitations period passed did Landstar insinuate that it would settle if plaintiff postponed filing the action. Nor did it say that it would settle regardless of the expiration of the limitations period or otherwise waive the defense. Rather, the limitations period expired due to plaintiff's woefully tardy compilation of its damage assessment and application for benefits. Because Landstar's actions did not amount to negotiation promises intended to forestall the filing of plaintiff's complaint, plaintiff's estoppel argument fails. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997).

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell